IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Crl. Misc. Application No. 1062 of 2001

Anil Johari Vs. State and another

Date of decision :-30/3/2006

~~A.F.R. (Approved for Reporting~~

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Not approved for reporting

Date :- 30/3/2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.1062 of 2001
{Old No.6881 of 1992}

Anil Johari S/o Sri Rameshwar Dayal
R/o Bagh Gulsher Khan
Police station Kotwali
District Pithoragarh .....Applicant

Versus

1. State of Uttaranchal
2. Smt. Kaushalya Devi
   W/o late Sri Mani Ram Bhatt
   R/o Mugrali, Badibeesi
   District Pithoragarh .....Respondents

Hon'ble J. C. S. Rawat, J.

1. The case has been received on transfer from Allahabad High Court after creation of State of Uttaranchal. Thereafter, the notice was sent to the parties. It was reported that the respondent No.2-Smt. Kaushalya Devi had died and the notice could not be served upon the applicant. It has been reported that the address given in the petition is not correct and the process server has also inquired the whereabouts of the applicant from the office of superintendent engineer, but he failed. It is duty of the applicant/petitioner if his address is changed he should have informed the court. The case was listed on the cause list and the name of his counsel Sri A.N. Srivastava has been shown in the cause list. None appeared for the applicant.

2. The petition under section 482 Cr.P.C. has been filed for quashing the proceedings of Session Trial No.12/1991 State Vs. Anil Johari and the charges framed under section 302 IPC vide order dated

30.8.1991 pending in the court of Sessions Judge, Pithoragarh.

3. Perusal of the record reveals that the proceedings of Session Trial No.12/1991 State Vs. Anil Johari have been stayed by the High Court. It seems that since the proceedings have been stayed hence the applicant is not pressing his case intentionally. Therefore, I am going into the merits of this case with the help of learned A.G.A.

4. Brief facts of the case are that the respondent No.2-Smt. Deoki Devo was working as maid servant with the applicant. As per the prosecution version, the applicant-Anil Johari poured the kerosene oil on the deceased and set her to fire. The death of the deceased was caused due to burn injuries resulting from sprinkling the kerosene oil. It was also alleged by the protection that the applicant had an illicit relations with the deceased and he tried to administer the liquor to her. When the deceased objected, the applicant set her on fire after sprinkling the kerosene oil upon her. Thereafter, the police investigated the matter and submitted the chargesheet against the applicant. When the matter proceeded in the court of Sessions, the applicant moved an application that there is no prima facie case against him and there is no evidence against him. Learned Sessions Judge rejected the application and found that there is sufficient evidence against the applicant. Thereafter, the Sessions Judge framed the charge against the applicant vide order dated 30.8.1991 Feeling aggrieved by this order, the applicant preferred this petition in the year 1992.

5. I have gone through the evidence on record with the help of learned A.G.A.

6. It has been stated in the statements of Kaushaliya Devi, Parvati Devi and Bhola Datt that the applicant had an illicit relations with the deceased. Immediately after the incident these witnesses reached at the spot and found that the applicant was present in the room. Some of the witnesses had also stated that a bottle of liquor was also there. These witnesses had also stated that there were some injuries on the person of the deceased. The deceased had also stated to them that the applicant set her to fire by sprinkling the kerosene oil. Later on, one of the witness i.e. Capt. Mohan Singh also reached at the spot. Capt. Mohan Singh found that the deceased was rapped with the blanket and she was in unconscious condition. It is also revealed from the statement recorded by the I.O. that the deceased stated to the witnesses immediately after the incident that the applicant set fire upon the deceased. This statement is relevant under section 32 of the Evidence Act. It is also pertinent to mention here that the deceased was lastly seen in the company of the accused applicant and she died in his company. Now, it is for the applicant to show under section 106 of the Evidence Act as to how she died. The Hon'ble Apex Court has also dealt with this aspect in **Joseph Vs. State of Kerala 2000 SCC (Cri) p/926.** It is also in the evidence that a dying declaration was recorded by the S.D.M. in which she has not implicated the accused for the said incident. At the time of framing of charge, the court has to see as to whether there is sufficient evidence to frame the charge or not. At the stage of framing of charege, the court will not scrutinize the evidence maticuloulsy as if the court is

sitting to pass the final judgment. The standard of appreciation of evidence at the stage of chare and final trial is totally different. But, this fact has to be considered by the trial court during the trial. There is sufficient evidence for framing the charge against the applicant-accused. There is a prima facie case against the applicant at this stage. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

7. In view of the foregoing discussion, the petition devoids of merit and is dismissed accordingly. Stay order stands vacated. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 30.03.2006
LSR